

FILED

OCT 30 2015

Clerk, U.S. District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

KINGSLEY ARIEGWE,

Petitioner,

vs.

LEROY KIRKEGARD; ATTORNEY
GENERAL OF THE STATE OF
MONTANA,

Respondents.

Cause No. CV 15-96-GF-DLC

ORDER DISMISSING PETITION
AND DENYING CERTIFICATE OF
APPEALABILITY

On October 29, 2015, Petitioner Kingsley Ariegwe filed this action for writ of habeas corpus under 28 U.S.C. § 2254. Mr. Ariegwe is a state prisoner proceeding pro se.

Mr. Ariegwe's motion to proceed in forma pauperis should be denied. The petition at hand is Ariegwe's seventh filed in this Court. He filed the first in 2008. *See Ariegwe v. State*, No. CV 08-79-GF-SEH-RKS (D. Mont. judgment entered Apr. 21, 2009). That petition, which challenged his 2004 conviction for attempted sexual intercourse without consent and unlawful transactions with minors, was dismissed with prejudice. *Id.* Ariegwe's next habeas petition was filed in 2011 and was dismissed as second or successive. *Ariegwe v. Mahoney*, No. CV 11-79-H-DWM (D. Mont. judgment entered Aug. 31, 2011). In 2012, Ariegwe filed two habeas petitions *Ariegwe v. Kirkegard*, No. CV 12-37-GF-SEH (D. Mont.

judgment entered June 13, 2012); *Ariegwe v. Kirkegard*, No. CV 12-101-GF-SEH-RKS (D. Mont. judgment entered Dec. 17, 2012). Both were dismissed as unauthorized third and fourth successive petitions, respectively. In 2013, Ariegwe then filed his fifth petition challenging the 2004 conviction. *Ariegwe v. Kirkegard*, No. CV 13-91-GF-DWM-RKS (D. Mont. judgment entered Nov. 12, 2013). He was again advised that this Court lacks jurisdiction to consider successive challenges to a conviction and that the Ninth Circuit would need to pre-authorize the filing of a successive petition before this Court could consider it under 28 U.S.C. § 2244(b)(3)(A). Rec. and Or. at 2, *Ariegwe v. Kirkegard*, No. CV 13-91-GF-DWM-RKS (Nov. 12, 2013). Mr. Ariegwe's sixth challenge to his conviction was, likewise, dismissed and this Court informed him:

Even if Mr. Ariegwe could prove his innocence to this Court beyond a shadow of a doubt...this Court would still lack jurisdiction to hear his case unless and until Mr. Ariegwe obtains leave from the Court of Appeals to file in this Court.

Rec. and Or. at 2, *Ariegwe v. Kirkegard*, No. CV 14-60-GF-DLC-RKS (Sept. 22, 2014).

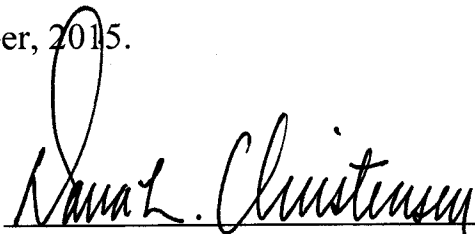
Since the filing of his last petition, nothing has changed. The Ninth Circuit has not authorized Mr. Ariegwe to file a successive petition. This Court lacks jurisdiction to consider Mr. Ariegwe's challenge to his 2004 conviction. *Burton v. Stewart*, 549 U.S. 147, 149 (2007)(per curiam).

Based on the foregoing, the Court enters the following:

ORDER

1. Ariegwe's Petition (Doc. 1) is DISMISSED for lack of jurisdiction as an unauthorized successive petition under 28 U.S.C. § 2254.
2. Ariegwe's Motion to Proceed In Forma Pauperis (Doc. 3) is DENIED.
3. The Clerk of Court is directed to enter a judgment of dismissal.
4. A certificate of appealability is DENIED.
5. This action is CLOSED. No further motions may be filed.

DATED this 30th day of October, 2015.

A handwritten signature in black ink, reading "Dana L. Christensen", is written over a horizontal line.

Dana L. Christensen, Chief Judge
United States District Court